IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl.A No.253-SB of 1994.

Date of Decision: 9.3.2007.

Pala Singh

....Appellant.

Versus

State of Punjab.

...Respondent.

CORAM : Hon'ble Mr. Justice A.N.Jindal.

Present:- Mr.T.S.Sangha,Advocate
for the appellant.

Mr.M.S.Joshi, DAG Punjab,
for the respondent.

****

A.N.JINDAL, J.

Pala Singh accused-appellant (hereinafter referred to `as the accused') faced trial for causing injuries to Ranjodh Singh on 9.9.1991. Consequently was convicted under Section 307,326,324,323 of Indian Penal Code and was sentenced as under:-

Under Section 307 IPC : To under go R.I. for five years and to pay a fine of Rs.2000/- and in default of payment of fine to further undergo R.I. for three months.

Under Section 324 IPC : To undergo R.I. for a period of six months and to pay a fine of Rs.500/- or in default of payment of fine to further undergo R.I. for a period of one month. Sentence of imprisonment was ordered to run concurrently.

The factual matrix of the case is that on 9.9.1991 Makhan Singh (injured) (brother of the complainant) had gone to Maur Mandi in connection with some household work, but he got late. Accordingly,Ranjodh Singh complainant went to see his brother at the Bus Stand who had already come there. On their return at about 7:00 p.m. When they reached near their house, the accused Pala Singh armed with gandasa, was seen standing near his house. When they had just crossed his house, the accused questioned them as to who were they? In response to which Makhan Singh disclosed his name. Pala Singh asked Makhan Singh to stop as he was wanted by him. Consequently, he came running towards them and inflicted gandasa blows on his head from its sharp side. He again inflicted a gandasa blow on his left ankle. The accused then tried to inflict a gandasa blow to Ranjodh Singh which was warded off by him but it struck on his left palm and then struck the right hand of Makhan Singh when he was lying on the ground. On raising hue and cry Pala Singh after inflicting another gandasa blow from its blunt side on the outer side of his right ankle fled away towards the fields. On receipt of information through complainant his father took him to the hospital.

Motive behind the occurrence is that the accused is a man of bad character. Makhan Singh had prevented him not to visit their street, therefore, on account of this grudge the accused caused injuries to Makhan Singh with an intention to kill him and also to the complainant. On the, intimation Ex-PC sent by the doctor at about 10:30 p.m. on 9.9.1991 about the admission of injured Makhan Singh and also another intimation Ex-PD at about 11:00 p.m. about the admission of Ranjodh Singh injured. ASI Gurcharan Singh visited the hospital and after seeking fitness certificate

Ex.PE/1 recorded the statement of Ranjodh Singh. However, Makhan Singh was declared unfit to make the statement by the doctor vide memo Ex.PF/1. Then again on 10.9.1991 he was declared unfit to make the statement. However, on the basis of the statement of Ranjodh Singh recorded by ASI Gurcharan Singh formal FIR Ex-PK/3 was recorded at 7:00 p.m.. Copy of the FIR was sent to the Illaqa Magistrate which reached him at 7:00 a.m. on 11.9.1991.

The investigation was set in motion. The investigating officer collected the MLRs of the injured and reached the place of occurrence; prepared the rough site plan Ex.PR with correct marginal notes; took into possession the blood stained earth vide memo Ex.PN and arrested the accused. On completion of investigation, challan against them was presented in the Court.

Accused was charge sheeted under Section 307,326 and 323 of Indian Penal Code to which they pleaded not guilty and claimed trial. On commencement of trial, besides examining both PW2 Ranjodh Singh, PW3 Makhan Singh who fully supported the prosecution case the prosecution also examined PW1 Dr.Harbhajan Singh, who conducted the MLRs of Makhan Singh and Ranjodh Singh, PW4 ASI Gurcharan Singh, PW5 Dr. A.Alexandar who X-rayed the injuries on the person of Makhan Singh, gave his report Ex.PX.

When examined under Section 313 Cr.P.C. the accused denied all the incriminating circumstance appearing against him and pleaded his false implication in the case. In his defence the accused examined Charanjit Kaur his sister who disclosed that on the day of occurrence when she was alone at her house and her mother had gone for work in the house of Hari

Ram due to Akhand Path ceremony, Pala Singh was also away for doing labour. Finding her alone Makhan Singh, injured came to their house, caught hold her arm and dragged her towards the room for outraging her modesty. On raising alarm her brother came and challenged Makhan Singh for having caught her arm. Makhan Singh insisted on his behaviour on which Pala Singh took the gandasa and gave two blows ;one on the head and the other on the hand of Makhan Singh. Then Makhan Singh rushed out of the house and fell down in the street. He continued saying that he would behave in the same fashion and abduct her. Pala Singh then gave two more gandasa blows on the legs of Makhan Singh. She rushed to the house of Hari Ram to inform her mother who along with Hari Ram came. Hari Ram went to the house of Makhan Singh and brought his father who took away Makhan Singh. She further disclosed that at the time of occurrence she was a married lady and had come to her parents to see them. No other evidence was led in defence.

On scrutiny of the evidence, the trial Court while believing the prosecution story and while holding that there was no merit in the defence, convicted the accused under Section 307,326,324,323 of Indian Penal Code and sentenced him accordingly. Hence this appeal.

The case of the prosecution is based on the testimony of PW2 Ranjodh Singh and PW3 Makhan Singh, both injured eye witnesses. At the same time the accused has also not denied having caused injuries to Makhan Singh accused. According to Dr. Harbhajan Singh PW1, the injuries on the person of Makhan Singh and Ranjoth Singh are of the same duration and they were examined on the same day with a difference of 20 minutes. Accused Makhan Singh was examined on 9.9.1991 at about 10:40 p.m.

whereas accused Ranjodh Singh was examined on the same day at about 11:15 p.m. The argument that both the injured reached the hospital at different times through different persons is not sustainable as sometimes the parties give different names of the person who admitted the injured in the hospital and the doctor has to positively mention those names and he will mention that name in the MLR when the injured is examined. The mention of different time of examination by the doctor with a difference of 35 minutes, is hardly sufficient to doubt the occurrence and hold that the injured suffered injuries at different incidents when both the injured have specifically stated that Pala Singh took them by surprise when they were coming from the bus stand. Witness Ranjodh Singh having suffered injuries would be the last person to exonerate the real culprit and implicate the accused when the accused could be implicated for the same gravity of offence for causing injuries to Makhan Singh alone.

Having scrutinized the testimony of both injured eye witnesses, I do not find any such infirmity or improvements in their statements so as to disbelieve their testimony.

Now coming to the offence, Doctor Harbhajan Singh, PW1, examined Makhan Singh on 9.9.1991 at about 10:40 p.m. and observed the following injuries:

1.An incised wound on the top of scalp 4" x ¼ " bone deep. 4 ½" above the left ear and 1 ½" behind the anterior hair line. Underneath bone fracture is present and also brain tissue is seen protruding through the fracture. Fresh bleeding was present. Advised X.ray.

2.An oblique incised wound 2" x ½" on the back of the right

hand just behind the middle finger. Underneath bone fracture is seen and also cut tendons are present. Fresh bleeding was present. Advised X-ray.

3.An incised wound 3" x ½ " on the left leg, just above the lateral mallealus, underneath bone fracture was present and also cut tendons were visible. Fresh bleeding was present. Advised x.ray.

4.Contusion 2 ½" x 2 ½ " over the right medical mallealus. Advised x-ray.

Doctor vide his MLR Ex-PA declared injuries No.2 and 3 as grievous in nature whereas injury No.1 was declared dangerous to life and injury No.4 was subjected to x-ray examination.

Similarly on the same day, at about 11:15 p.m. he examined Ranjodh Singh injured and observed the following injuries on his person:-

An incised wound 4 cm. x ¼ cm x ¼ cm on the Palmer surface of left hand just below the wrist joint on the medial side. Fresh bleeding was present.

While proving the MLR Ex.PB he declared the injury on the person of Ranjodh Singh as simple in nature. Dr.A. Alexandar, who x-rayed the injury on the person of Makhan Singh proved his report Ex.PX. The injury No.1 on the person of Ranjodh Singh indicates that it was really dangerous to life as it was on the top of the scalp 4" x ¼" bone deep, 4 ½ " injury above the left ear and 1 ½" injury behind the anterior hair line. Underneath bone fracture was present and brain tissue was seen protruding through the fracture. As regards defence set up by the accused, it can hardly be believed. Though a serious allegation has been levelled against Makhan

Singh PW that he had caught hold of Charanjit Kaur in order to outrage her modesty but no such case was got registered by the accused or Charanjit Kaur regarding this illegal act. Charanjit Kaur had admitted that her brother also did not approach the Panchayat about the earlier conduct of Makhan Singh. It has also come in evidence that Pala Singh had refused to work with Makhan Singh as he had an evil eye on Charanjit Kaur. But this grievance has also not been expressed by the accused by moving any application before Panchayat by Pala Singh. It is a matter of common parlance that Charanjit Kaur a married lady in order to save her brother from this grave punishment to be awarded under Section 307 of Indian Penal Code could go to any extent to depose against the injured. Consequently, the defence set up by the accused also does not stand to the reason.

While going to the worst Charanjit Kaur in her statement disclosed only that the accused had caught hold of her arm when he was inflicted injuries. Thus, act of the accused does not fall within the purview of committing rape as on to attract the right of private defence as envisaged under Section 97 of the Penal Code. This legal proposition has also not disputed by the counsel for the appellant.

Faced with the situation, Mr. T.S.Sangha, counsel for the appellant has urged that since the accused has been facing agony of the trial for the last 12 years, therefore, it would be expedient and in the interest of justice to take a lenient view. No doubt the agony of the complainant whose head was badly injured and it was a miracle that he survived cannot be ignored yet longevity of the trial can be a mitigating circumstance to reduce the sentence.

For the afore-going reasons the appeal preferred by the appellant/accused is hereby dismissed with the modification that the sentence awarded against him is reduced to three years without altering the sentence of fine. The Chief Judicial Magistrate, Bathinda, would ensure the custody of accused for serving the remaining part of his sentence.

(A.N.JINDAL)
JUDGE

March 9,2007
Reema